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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/726,880	11/30/2000	Chyi-Cheng Chen	20223 US (C38435/120240)	1470

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EXAMINER
WARE, TODD

ART UNIT	PAPER NUMBER
1615	

DATE MAILED: 03/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/726,880	Applicant(s) CHEN ET AL.	
	Examiner Todd D Ware	Art Unit 1615	

-- The MAILING DATE of this communication app ars on the cover sheet with the correspond nce address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *1* MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 November 2000* .

2a)☐ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-27* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) _____ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) *1-27* _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-15, 17, drawn to a powder, classified in class 424, subclass 499,500.

II. Claim 16, drawn to an emulsion, classified in class 514, subclass 937.

III. Claims 18-19, drawn to a beverage, classified in class 424, subclass 400.

IV. Claims 20-21, drawn to a skin care product, classified in class 424, subclass 401.

V. Claims 22-24, drawn to a method for making a powder, classified in class 424, subclass 489.

VI. Claims 25-27, drawn to a pharmaceutical tablet, classified in class 424, subclass 464.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are not discloses as capable or use together; the emulsion of group II does not require a matrix selected from polysaccharide gum, proteins and mixtures thereof. Thus the different inventions would have different modes of operation since any emulsion having 70-200 nm droplets would satisfy the

requirements of claim 16. Such an emulsion might be made of oils which would provide different release characteristics of the vitamins.

3. Inventions I and III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are not disclosed as capable or use together; the invention of group I could be a capsule, or simply the powder alone while the invention of group II specifies a beverage.

4. Inventions I and IV are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are not disclosed as capable or use together; the invention of group I could be a capsule, or simply the powder alone while the invention of group II specifies a skin care product.

5. Inventions I and V are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the invention of group I can be made by combining either polysaccharide gum(s), or protein(s) or mixtures thereof to formulate a composition that forms an emulsion upon ingestion.

6. Inventions I and VI are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are not disclosed as capable or use together; the invention of group I could be a capsule or a beverage or a skin care product, or simply the powder alone while the invention of group VI specifies a tablet.

7. Inventions II and III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are not disclosed as capable or use together; the emulsion of group II does not require a matrix selected from polysaccharide gum, proteins and mixtures thereof. Thus the different inventions would have different modes of operation since any emulsion having 70-200 nm droplets would satisfy the requirements of claim 16. Such an emulsion might be made of oils which would provide different release characteristics of the vitamins.

8. Inventions II and IV are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are not disclosed as capable or use together; the emulsion of group II does not require a matrix selected from polysaccharide gum, proteins and mixtures thereof. Thus the different inventions would have different modes of operation since any emulsion having 70-200 nm droplets would satisfy the

requirements of claim 16. Such an emulsion might be made of oils which would provide different release characteristics of the vitamins.

9. Inventions II and V are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are not disclosed as capable or use together; the emulsion of group II reads on liposomes while the invention of group III is a method for making a powder composition. Thus, an emulsion of group II would be useful for controlled release or enhancing solubility of an active agent and does not require being dry or in powder form.

10. Inventions II and VI are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are not disclosed as capable or use together; the emulsion of group II does not require a matrix selected from polysaccharide gum, proteins and mixtures thereof. Thus the different inventions would have different modes of operation since any emulsion having 70-200 nm droplets would satisfy the requirements of claim 16. Such an emulsion might be made of oils which would provide different release characteristics of the vitamins.

11. Inventions III and IV are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of

operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are not disclosed as capable or use together; the invention of group III requires a beverage while the invention of group IV requires a skin care product. The mode of operation of a beverage is ingestion while the mode of operation of a skin care product is by topical application as in cosmetics.

12. Inventions III and V are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are not disclosed as capable or use together; the invention of group III is a beverage while the invention of group V is a method for producing a powder. The invention of group III need not be made with a powder made by the process of group V. Instead, a process of heating the ingredients of group III would result in dispersion of the active agent in the matrix and combining this with a liquid would result in an emulsion. Furthermore, the process of group V does not require the emulsion-forming matrix where the matrix is selected from polysaccharide gum, proteins and mixtures thereof. As such, other substances that form a matrix may be used in the invention of group V.

13. Inventions III and VI are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are not disclosed as capable or use together;

the invention of group III requires a beverage while the invention of group VI requires a composition such as a tablet. The mode of operation of a beverage is through ingestion while the mode of operation of a tablet may be through either ingestion or mucosal administration.

14. Inventions IV and V are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are not disclosed as capable or use together; the invention of group IV is a skin care product while the invention of group V is a method for producing a powder. The invention of group IV need not be made with a powder made by the process of group V. Instead, a process of heating the ingredients of group IV would result in dispersion of the active agent in the matrix and combining this with a liquid would result in an emulsion. Furthermore, the process of group V does not require the emulsion-forming matrix where the matrix is selected from polysaccharide gum, proteins and mixtures thereof. As such, other substances that form a matrix may be used in the invention of group V.

15. Inventions IV and VI are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are not disclosed as capable or use together; the invention of group IV requires a skin care product while the invention of group VI requires a composition such as a tablet. The mode of operation of a skin care product

is through topical application as in cosmetics while the mode of operation of a tablet may be through either ingestion or mucosal administration.

16. Inventions V and VI are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are not disclosed as capable or use together; the invention of group V method for producing a powder while the invention of group VI requires a composition such as a tablet. The invention of group VI need not be made with a powder made by the process of group V. Instead, a process of heating the ingredients of group VI would result in dispersion of the active agent in the matrix and combining this with a liquid would result in an emulsion. Furthermore, the process of group V does not require the emulsion-forming matrix where the matrix is selected from polysaccharide gum, proteins and mixtures thereof. As such, other substances that form a matrix may be used in the invention of group V.

17. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

18. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II (this also applies for Groups I and III, I and IV, I and V, I and VI, II and III, II and IV, II and V, II and VI, III and IV, III

and V, III and VI, IV and V, IV and VI, and groups V and VI), restriction for examination purposes as indicated is proper.

19. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

20. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Todd D Ware whose telephone number is (703) 305-1700. The examiner can normally be reached on M-F, 8:30 AM - 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K Page can be reached on (703)308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 308-4556 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

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March 6, 2002